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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 73-1244

UNITED STATES OF AMERICA, *Petitioner,*

vs.

JESSIE SHORT, et al., *Respondents.*

BRIEF OF RESPONDENTS JESSIE SHORT ET AL. IN OPPOSITION TO PETITION OF THE UNITED STATES OF AMERICA FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Subject Index

	Page
Questions presented	1
Statutes involved	5
Statement of the case	5
Argument why writ of certiorari should not be granted	15
Conclusion	23

Table of Authorities Cited

Cases	Pages
Donnelly v. United States, 228 U.S. 243 (1913)	15
Halbert v. United States, 283 U.S. 753 (1931)	20
Healing v. Jones, 210 F. Supp. 125 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963)	19, 20
Indians of California v. United States, 98 Ct. Cl. 583 (1942)	6
Mattz v. Arnett, 412 U.S. 481	6, 7, 10, 15
The Quinaielt Tribe v. United States, 102 Ct. Cl. 822 (1945)	20
United States v. Rickert, 188 U.S. 432 (1903)	21
Orders	
Executive Order of 1891	18
Rules	
Rules of Court, Rule 19	15
Statutes	
Act of April 8, 1864, 13 Stat. 39	4, 7, 17, 19, 20
Act of June 17, 1892, 27 Stat. 82	10, 18
Act of March 3, 1927, Section 4, 44 Stat. 1347, 25 U.S.C. 398d	5, 19
General Allotment Act of 1887, 24 Stat. 388	10, 11, 21

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Respondents Jessie Short, et al., the Plaintiffs in the United States Court of Claims, present this brief in opposition to the Petition of the United States of America for a Writ of Certiorari to the United States Court of Claims.

QUESTIONS PRESENTED

The statement in the petition of the United States of the questions presented by the decision of the Court

of Claims is misleading in that it assumes facts that are contrary to the findings of the Court of Claims or that have neither been found by that Court nor established by any evidence in the record.

The petition of the United States states as the first question:

> "Whether, in light of the discretion given the President by Congress to settle Indians on reservations in California, and in light of specific actions by Congress treating separately different parts of the Hoopa Valley Reservation, the Court of Claims erred in setting aside the determination by the Secretary of the Interior that the Hoopa Valley Tribe has tribal jurisdiction over the portion of the Reservation that is its ancestral home and historic reservation and which continues to be the place where most of the enrolled members of the tribe reside."

The findings of the Court of Claims show that the "Hoopa Valley Tribe" is an organization of Indians of arbitrary composition that did not come into existence until 1950. (Fdgs. 136-156, App. 85).[1] Thus it is misleading to speak of "the Hoopa Valley Tribe," as distinguished from the ethnic group "the Hoopa Tribe," as having an "ancestral home." Moreover, the Court of Claims found that only the southern half of the twelve-mile-square portion of the reservation over which the Hoopa Valley Tribe unlawfully was granted exclusive jurisdiction constituted ancestral territory of

[1] "App." refers to the separately bound appendix filed with the petition for a writ of certiorari (No. 73-1104) filed by the Hoopa Valley Tribe, intervenor below.

the Hoopa tribe. The northern half, the Court found to be ancestral territory of the Yurok Tribe. (Fdgs. 5, 21, 23; App. 15, 25-27).

Nor was this twelve-mile-square portion ever an "historic reservation" exclusively for the Hoopa Tribe. The Court of Claims found that at the time this area was designated as an Indian Reservation it was occupied by Indians of the Hoopa, Redwood, and Yurok Tribes. (Fdgs. 22 and 179; App. 27 and 100). The Court of Claims further found that the evidence was abundant that the Hoopa Valley Reservation was intended from the outset (that is when only the twelve-mile-square portion had been designated as an Indian Reservation) for the accommodation of numbers of tribes of Northern California including the Klamaths (Yuroks). (Fdg. 180; App. 100).

The Court of Claims made no finding that the twelve-mile-square portion of the Hoopa Valley Indian Reservation is the place "where most of the enrolled members" of the Hoopa Valley Tribe reside. Nor is there any evidence in the record showing this to be true. The only finding on the subject is that when the membership roll of the Hoopa Valley Tribe was submitted to the Commissioner of Indian Affairs for approval in 1950, "many" of the members were *not* residents of the Reservation. (Fdg. 148, App. 88).

The petition of the United States states as the second question:

> "Whether the Secretary of the Interior acted properly in paying the proceeds of annual sales of timber on the original Hoopa Valley Tribe por-

> tion of the Hoopa Valley Reservation to members of the Hoopa Valley Tribe, to the exclusion of the respondents, members of the Yurok Tribe."

This statement is misleading in two respects. First, the findings of the Court of Claims previously noted show that the original twelve-mile-square portion of the reservation was not "the original Hoopa Valley Tribe portion." Second, the respondents are not exclusively members of the Yurok Tribe, but represent all of the Indians entitled to share in the benefits of the Hoopa Valley Reservation, but who do not meet the arbitrary membership requirements of the organization of Indians known as the Hoopa Valley Tribe. Some of the respondents are of mixed Yurok and Hoopa blood, others are of Karok blood, and some are only of Hoopa blood. (See e.g., Fdgs. 191, 192, 196, 199, 206, 210, 212; App. 107-111).

There is only one single underlying question presented by the decision of the Court of Claims and that is whether or not the Hoopa Valley Indian Reservation in California, created and enlarged by Executive Orders validly issued in furtherance of and pursuant to the Act of Congress of April 8, 1864, 13 Stat. 39, providing for the establishment of not more than four reservations to accommodate all of the Indians of California, constitutes a single reservation held in trust by the United States for the equal benefit of all California Indians accommodated thereon.

A subsidiary question, which, however, finds its answer in the answer to the underlying question, is

whether the Secretary of the Interior acted properly in paying the proceeds of annual sales of timber on the original twelve-mile-square portion of the Reservation to members of the organization of Indians known as the Hoopa Valley Tribe to the exclusion of other Indians who had been accommodated on the Reservation, and who had been recognized as having equal rights there.

STATUTES INVOLVED

In addition to the statutes cited by petitioner, Section 4 of the Act of March 3, 1927 is also involved. This statute provides as follows:

> "Sec. 4. That hereafter changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided,* That this shall not apply to temporary withdrawals by the Secretary of the Interior." (44 Stat. 1347; 25 U.S.C. 398d.)

STATEMENT OF THE CASE

Inasmuch as petitioner's statement of the case is in many respects inaccurate and omits facts found by the Court of Claims inconsistent with the picture of the case which petitioner seeks to portray, respondents find it necessary to present the following statement.

This case arose by reason of the unique method adopted by the Congress to provide permanent reser-

vations adequate to accommodate all of the Indians of California, and subsequent arbitrary administrative action thwarting the Congressional purpose.

Originally the Congress had sought to provide permanent reservations for the Indians of California, in a manner frequently employed elsewhere in the United States, by appointing Commissioners to negotiate for treaty reservations for particular tribes. Eighteen such treaties were negotiated with the California Indians and significantly one of them provided for a joint reservation for the Hoopa, Yurok, and Karok Tribes which would have encompassed much of the same area as ultimately became the Hoopa Valley Reservation. (Fdg. 18(e), App. 25). However, the Senate failed to ratify any of these treaties. See, *Indians of California v. United States,* 98 Ct. Cl. 583 (1942).

When the efforts to provide treaty reservations proved abortive, the Congress sought to deal temporarily with the California Indians by providing for the establishment of military reservations for the confinement of as many of them as possible. One of such military reservations established in 1855 was the Klamath River Reservation which consisted of a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River for a distance of approximately 20 miles. (Fdg. 1, App. 14).

Contrary to the assertion of petitioner, the Klamath River Reservation was not established "for the Yurok Indians." This is so even though as this Court observed in *Mattz v. Arnett,* 412 U.S. 481 at 487, this

area was ideally selected for the Yuroks since they had lived in this area and there was limited arable land and an abundance of fish in the river. For, as this Court also noted in *Mattz,* the statutes pursuant to which this reservation was established merely provided for the selection of reservations for collecting and subsisting "the Indians of California." 412 U.S. at 487. Members of various tribes, in addition to members of the Yurok tribe, were placed on this Reservation. (Fdg. 7, App. 15).

In 1864, the Congress acted to provide permanent reservations for the Indians of California by enacting the Act of April 8, 1864, 13 Stat. 39, which authorized the President to establish not more than four reservations, as remote from white settlements as possible, adequate to accommodate all of the Indians of the State. (A. 113).

In August of that year Austin Wiley, the Superintendent of Indian Affairs for California, reported to the Commissioner of Indian Affairs that he had posted a public notice of the establishment, pursuant to the Act of April 8, 1864, of a reservation in Klamath County, California of such metes and bounds as might ultimately be approved by the President. He further advised the Commissioner that he was proposing for such reservation the whole of the Hoopa Valley and to the summit of the mountains on each side about five miles. (Fdgs. 13 and 15, App. 18-19).

On February 18, 1865, Superintendent Wiley issued a public notice defining the boundaries of the Hoopa Valley Reservation as follows "Beginning at a point

where Trinity river flows into Hoopa valley and following down said stream, extending six miles on each side thereof, to its junction with Klamath river." The reservation as thus described consisted of a tract of land twelve miles square bisected by the lower twelve miles of the Trinity River. Since the Hoopa Valley proper is approximately six miles in length and after leaving the valley the Trinity Rivers flows another six miles through a precipitous canyon to its junction with the Klamath River, the reservation as ultimately proposed by Superintendent Wiley and as eventually formally defined by Executive Order in 1876, was twice as large as originally proposed by Wiley in his report to the Commissioner of Indian Affairs in August, 1864. (Fdg. 21; App. 25-27). This tract encompassed nearly 90,000 acres. (Fdg. 34; App. 30-31).

This entire area was not as stated by petitioner the "historic home of the Hoopas." The native villages of the Hoopas were along the Trinity River in the Hoopa Valley proper and continuing upstream (south) beyond and south of this twelve-mile-square tract. The north half of the twelve-mile-square tract, to the extent that it was inhabited was the home of members of the Yurok tribe who lived in the precipitous canyon of the Trinity north of the Hoopa Valley proper and in the northwest part of the tract. Thus the north half of the original twelve-mile-square portion of the Hoopa Valley Reservation was native territory of the Yuroks, not the Hoopas. (Fdgs. 5, 21, 22, 179; App. 15, 25-27, 100). Consequently, at the time the original

twelve-mile-square portion of the Hoopa Valley Reservation was first defined by Superintendent Wiley in 1865 it was occupied by members of both the Hoopa and Yurok tribes. Its inhabitants also included a number of Indians of the Redwood tribe who had recently been induced to move into the Hoopa Valley proper. (Fdg. 22; App. 27).

Since the Act of April 8, 1864 provided for no more than four reservations to accommodate all of the Indians of California and since there were a multitude of tribes in the State, it was necessarily contemplated from the outset that the Hoopa Valley Reservation would be a multi-tribal reservation for the benefit of all of the Indians who were eventually accommodated thereon. (Fdg. 180; App. 100). The very year that Superintendent Wiley defined the boundaries of the original twelve-mile-square portion of the Reservation, it was contemplated that some 1800 Yurok Indians then living along the Klamath River would move to the Reservation. (Fdg. 25; App. 27). In 1869, the government moved more than 300 Indians of the Saiaz or Nogatl, the Wiyot, Wylackie and Sinkyone tribes onto the Reservation (Fdg. 28(a); App. 28).

Despite the vast acreage of the Hoopa Valley Reservation as originally established, most of it was not suitable for habitation. Thus in 1891, in order to accommodate on this reservation the numerous Yurok Indians living nearby, President Harrison by Executive Order enlarged the reservation to include a strip one mile on each side of the Klamath River from the

then northern boundary of the reservation at the junction of the Klamath and the Trinity to the Pacific Ocean. (Fdg. 33; App. 30). The lower twenty miles of this narrow strip constituted the old Klamath River military reservation which had never been formally abandoned. The intervening strip of land along the Klamath River added to the Hoopa Valley Reservation, often referred to as the Connecting Strip, had never theretofore constituted reservation land. (Fdg. 34; App. 30-31).

The following year by the Act of June 17, 1892, 27 Stat. 82, the portion of this addition to the Hoopa Valley Reservation which had constituted the old Klamath River Reservation was opened for public settlement, subject to the prior allotment, pursuant to the General Allotment Act, of homesites to the Indians inhabiting that area and the reservation of village sites. (Fdg. 77; App. 51-52; Act of June 17, 1892; App. 115). The Act of June 17, 1892 also provided that the proceeds from the sale of land in this area to non-Indian settlers should be placed in a fund for the maintenance and education of the Indians residing in this area and their children.

This Court has recently ruled in *Mattz v. Arnett,* 412 U.S. 481 (June 11, 1973), that the Act of June 17, 1892 did not have the effect of terminating the status of this area as part of the Hoopa Valley Indian Reservation. The Court of Claims, after an exhaustive consideration of the legislative history and background of this Act, also found, contrary to the contention of petitioner, that this statute was not intended to limit

the Indians of this portion of the Hoopa Valley Reservation to rights in this area and deprive them of the benefit of the communal lands in the remainder of the Reservation. (Fdgs. 49-77 and 184; App. 35-52 and 101-102).

A program for allotment of homesites to individual Indians pursuant to the General Allotment Act of 1887, 24 Stat. 388, had already been instituted on the original portion of the Reservation prior to its enlargement by the Executive Order of 1891. During the year in which the General Allotment Act was enacted, executive authority had been given for surveys preliminary to allotments and in 1889 while the surveys were still underway temporary allotments were made pending completion of the surveys (Fdg. 78(b); App. 52-53). After the enlargement of the Reservation and the closely following passage of the Act of June 17, 1892, which specifically authorized allotments pursuant to the General Allotment Act in the area of the Hoopa Valley Reservation which had been the old Klamath River Reservation, an allotment program in this area was promptly instituted as well as in the remainder of the addition to the Reservation referred to as the Connecting Stip. (Fdgs. 78(b), 78(c), 79-85; App. 52-58). By 1894 when the making of allotments in the addition to the Hoopa Valley Reservation had been completed, the allotments surveys commenced in the original portion of the reservation in 1887 had been finished, and Presidential authority was given for the formalizing of allotments in this part of the Reservation. Specific instructions were given that this

should be done in a manner which would permit the retention of any improvements on the temporary allotments which had been made pending completion of the surveys. (Fdgs. 86 and 87; App. 58-59). However, it developed that the original surveys were inadequate, and as a result the formalizing of the allotments in this area of the Reservation was delayed until 1922 and 1923. (Fdgs. 88 and 90; App. 59 and 61).

Petitioner asserts that this allotment program constituted a pattern of administrative and legislative action recognizing in the residents of the area of the old Klamath River Reservation, the Connecting Strip and the original twelve-mile-square portion of the Hoopa Valley Reservation separate rights in each area. This assertion is directly contrary to the finding of the Court of Claims on the basis of a most careful analysis of the allotment program, that it shows "no trace" of any such understanding or intention. (Fdg. 186; App. 104).

The findings of the Court of Claims show without question that from the time of the enlargement of the Hoopa Valley Reservation in 1891 until the early 1950's the entire Reservation was administered as a single integrated reservation; all of its Indian inhabitants had unrestricted access to and use of all portions of the reservation and were recognized as having equal rights thereon. In every instance in which the question was raised, it was ruled that the Indians of the addition had equal rights in the original portion of the Reservation. (Fdgs. 35-36, 101-131, 167; App. 31, 67-84, 95).

Inasmuch as petitioner makes the misleading statement that "tribal government of the Hoopa portion of the Reservation is of long standing", it is appropriate to note the findings of the Court of Claims regarding Indian participation in the government of the Hoopa Valley Reservation.

It is important to recognize at the outset that historically the Hoopa, Yurok, and other tribes who occupied or settled upon the Hoopa Valley Reservation, were not politically organized, had no tribal government and for many years after the Hoopa Valley Reservation was established did not participate in its administration. (Fdg. 109; App. 76-77). In 1915-1916 an ad hoc council was assembled by the Superintendent to consider application for enrollment on the Reservation. The Commissioner of Indian Affairs directed that this council be representative of all of the tribes having rights on the Reservation. The Yurok member of this council, although then living in the Hoopa Valley proper, held an allotment of land on the addition. (Fdgs. 110 and 128; App. 77 and 83). There is no evidence of further Indian participation in the administration of the Hoopa Valley Reservation until 1933. From 1933 until 1950, there functioned on the Reservation a governmental body known as the Hoopa Business Council. The members of this council were all Indians drawn from the Hoopa Valley proper and the immediately adjacent Bald Hills area since difficult travel conditions made it impracticable for Indians residing in other areas of the Reservation to attend regularly. However the Hoopa, Yurok and Karok tribes all were

represented in the council membership and the council acted in respect to matters arising on and affecting all portions of the Reservation. The Indian judge appointed by this council was a Yurok who adjudicated matters arising on all portions of the Reservation. (Fdgs. 126-131; App. 82-84).

The organization of the Hoopa Valley Tribe in 1950 to embrace only a portion of the Indians of the Hoopa Valley Reservation (Fdgs. 136-156; App. 85-92) and the subsequent distribution of the revenues from the original portion of the Reservation exclusively to the select membership of this organization (Fdgs. 166-174; App. 95-98), constituted a complete departure from the situation that had prevailed for more than half a century since the Reservation's enlargement and an abrogation of the rights of the majority of the Indians who had been recognized as entitled to share equally in the resources of the entire Reservation.[2]

The decision of the Court of Claims does no more than restore these rights which are grounded in the Act of April 8, 1864 and the implementing executive orders creating the Hoopa Valley Reservation and which were consistently recognized by administrative

[2]Petitioner asserts without any supporting reference that most of the Yuroks (apparently meaning Respondents) in contrast to the Hoopas (apparently meaning the members of the organization known as the Hoopa Valley Tribe) live totally outside the Reservation. The Court of Claims made no finding to this effect and there is no evidence that this is so. To the contrary, the only finding on the subject is that when the membership roll of the Hoopa Valley Tribe was submitted to the Commissioner of Indian Affairs for approval in 1950 "many" of the members were *not* residents of the Reservation (Fdg. 148, App. 88).

action until the coup executed by the members of the organization self-denominated as the Hoopa Valley Tribe.

ARGUMENT WHY WRIT OF CERTIORARI SHOULD NOT BE GRANTED

This case presents none of the reasons for granting the writ of certiorari of the character set forth as guides in Rule 19 of this Court.

The Court of Claims has not rendered a decision in conflict with the decision of any other federal court.

The Court of Claims has not decided an important question of federal law which has not been, but should be, settled by this Court, nor decided a federal question in a way in conflict with the applicable decisions of this Court. To the contrary, the Court of Claims has resolved this case by applying to the facts which it has found to be true, the principles of federal law enunciated tby this Court in its decision in *Donnelly v. United States*, 228 U.S. 243 in 1913 and in the decision last year in *Mattz v. Arnett*, 412 U.S. 481, in which the decision and findings of the trial judge of the Court of Claims in the present case were extensively referred to.

Clearly the Court of Claims has not in any way departed from the accepted and usual course of judicial proceedings.

This case was considered by the Court of Claims after a trial in which there was introduced volum-

inous documentary evidence assembled through a number of years of discovery and in which numerous witnesses were examined and subjected to full cross-examination.[3] The trial judge permitted the organization known as the Hoopa Valley Tribe to participate fully in the trial and post-trial briefing as amicus even though it had resisted participation until shortly before the trial.

Following the extensive post-trial briefing, the trial judge spent nearly two years in meticulously analyzing the evidence and the arguments and in preparing extensive and carefully worded findings. After another round of extensive briefing following the filing by petitioner and the Hoopa Valley Tribe, as amicus, of objections to the trial judge's recommended decision and findings, and after oral argument, the seven judges of the Court of Claims unanimously adopted the decision and findings of the trial judge without change.

Petitioner submits two reasons for granting the writ, the second of which has two facets. Both reasons are predicated upon assumptions of fact contrary to the findings of the Court of Claims and are lacking in substance.

As its first reason, petitioner contends that the decision of the Court of Claims "erroneously upsets established tribal rights and relations" upon "the mistaken premise that where the President is authorized

[3]Although petitioner and the Hoopa Valley Tribe had scheduled a number of government officials and members of the Hoopa Valley Tribe as witnesses in a pre-trial statement filed with the Court, none of them were called.

to settle more than one tribe on a reservation, particular areas cannot be reserved for each tribe."

It is manifest that the decision of the Court of Claims does not upset, but rather restores, rights and relations which were established and recognized for more than half a century before they were abrogated by the arbitrary action of the Secretary of the Interior in distributing the revenues from the original portion of the reservation exclusively to the members of the Hoopa Valley Tribe organized in 1950.

The question of the power of the President under the Act of April 8, 1864 to have reserved particular portions of the reservation for particular tribes is in no way involved in the decision of the Court of Claims. For the Court found that the President had no intention that particular portions of the reservation should be for the exclusive benefit of particular tribes.

Members of the Yurok and Hoopa tribes shared the original twelve-mile-square portion of the Reservation from the time that it was first designated as an Indian Reservation. The north half to the extent it was used and inhabited was native territory of the Yuroks, not the Hoopas. A number of Redwood Indians had been induced to move into the Hoopa Valley when the boundaries of the Reservation were first defined. (Fdg. 22; App. 27). A few years later more than 300 Indians of the Saiaz, Wiyot, Wylackie and Sinkyone tribes were moved into the Hoopa Valley proper. (Fdg. 28(a); App. 28). Thus prior to the Reservation's enlargement the original twelve-mile-

square portion had clearly not been reserved for the exclusive benefit of the Hoopa tribe.

The Court of Claims found that the plain and natural effect of the Executive Order of 1891 (App. 119) enlarging the Hoopa Valley Reservation was to create an enlarged Reservation in which the Indians of the original reservation and the Indians of the added tract would have equal rights in common. (Fdg. 183; App. 101). The Court further found that an exhaustive study of the background of both the Executive Order of 1891 and the Act of June 17, 1892 (App. 115) showed no sign of executive or Congressional intent that the Reservation should be divided into three separate areas insofar as substantive rights were concerned. (Fdg. 184; App. 101-102).

The fantastic theory that the Hoopa Valley Reservation constituted a tripartite reservation united for administrative purposes only and comprised of three separate segments insofar as substantive rights were concerned was never advanced by anyone until it appeared in the pre-trial statement of the contentions of fact and law made by petitioner and the amicus, Hoopa Valley Tribe.

Petitioner also asserts that no rights could have been abrogated by the action of the Secretary of the Interior in distributing revenues from the original twelve-mile-square portion of the Reservation exclusively to members of the Hoopa Valley Tribe because the Court of Claims has found that no Indians acquired vested rights in the Reservation. Here again, petitioner misstates the actual finding of the Court.

The Court did not find that Indians accommodated on the Hoopa Valley Reservation did not acquire vested rights of any sort. The Court found only that the right of Indians accommodated on the reservation to share in its benefits remained subject to the President's continuing authority under the Act of April 8, 1864 to accommodate additional Indians thereon in order to effect the Congressional purpose to accommodate all of the Indians of California on not more than four reservations. (Fdgs. 175 and 181; App. 99-100). The action of the Secretary of the Interior in distributing the revenues from the original twelve-mile-square portion of the Reservation exclusively to the members of the Hoopa Valley Tribe obviously did not constitute Presidential action taken pursuant to the Act of April 8, 1864 to further the Congressional purpose of accommodating all of the Indians of California on not more than four reservations. Moreover, such action by the Secretary, which in effect changed the boundaries of the Hoopa Valley Reservation by dividing it into separate reservations was specifically prohibited by Section 4 of the Act of March 3, 1927, 44 Stat. 1347, 25 U.S.C. 398d, which prohibits any changes in the boundaries of Indian reservations except by Act of Congress. *Cf. Healing v. Jones,* 210 F. Supp. 125 at 181 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963).

As its second reason why the writ should be granted, petitioner asserts that the decision of the Court of Claims unduly intereferes with the authority of the political branches of the government to recog-

nize tribal membership and tribal jurisdiction. This is an ironic contention, because in making it petitioner recognizes that the ultimate authority in dealing with Indian tribes is the Congress. The sole effect of the decision of the Court of Claims in the present case is to strike down arbitrary interference with the method for providing reservation accommodations for the Indians of California prescribed by the Congress in the Act of April 8, 1864. The Court has exercised the very necessary and proper judicial function of determining what Indians are entitled to share equally in the benefits of the Hoopa Valley Reservation pursuant to the Congressional mandate in the Act of April 8, 1864 and the implementing Executive Orders of 1876 and 1891. *Cf. Halbert v. United States,* 283 U.S. 753 (1931); *The Quinaielt Tribe v. United States,* 102 Ct. Cl. 822 (1945) and *Healing v. Jones,* 210 F. Supp. 125 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963).

Petitioner also makes the spurious argument that the Court of Claims should not have struck down the action of the Secretary of the Interior in distributing the revenues from the original twelve-mile-square portion of the Reservation exclusively to the members of the Hoopa Valley Tribe, because such action by the Secretary was "just." The alleged justness of this action is grounded in the claim that it preserved for the Indians who received small individual allotments of land in this portion of the Reservation the benefit of common land that would not exist had they received as large allotments as some Indians on other

portions of the Reservation. There are glaring fallacies in this claim.

All of the individual allotments on the Hoopa Valley Reservation were made pursuant to the General Allotment Act of 1887, 24 Stat. 388. The purpose of the General Allotment Act was to provide each Indian with an individual parcel of land on which he could maintain a settled home and hopefully sustain himself and his family by agricultural and pastoral pursuits. *United States v. Rickert,* 188 U.S. 432 (1903) at pages 437 and 442. Certainly the General Allotment Act did not contemplate that the right of an Indian allotted under the Act to thereafter share the benefits of the common land of the Reservation would depend on the relative value of his allotment in respect to other allotments on the reservation.

Moreover, although the Indians given allotments on the addition to the Hoopa Valley Reservation were given allotments of a larger average size than the allotments in the original portion of the Reservation, this was so for the simple reason that there was little arable land on the addition and larger allotments were necessary in order to provide the allottee with sufficient land on which he might possibly sustain himself by grazing livestock. It was recognized that much of the land available for allotment on the addition was of no value to the Indian. (Fdg. 84; App. 57). On the other hand, the allotments on the original portion of the Reservation were made in the fertile Hoopa Valley and the adjacent open grassland area of the Bald Hills. (Fdg. 90; App. 61). These allotments at

the time they were made were far more valuable to the allottees than those on the addition.

Furthermore, it simply is not true that if the Indians allotted on the original portion of the Reservation had been given allotments of as large an average size as those on the addition, there would be no common land left on the original portion of the Reservation. The allotments on the Hoopa Valley Reservation of the largest average size were those made in the area which had been the old Klamath River Reservation, where they averaged approximately 60 acres. (Fdg. 83; App. 56). If all of the 365 persons allotted on the original portion of the reservation had been given allotments of 60 acres, only 21,900 of the 89,572 acres in this portion of the Reservation would have been utilized. (Fdgs. 34 and 90; App. 30-31 and 61).

Also, the criterion for membership in the Hoopa Valley Tribe is not the size or value of the allotment received by a member. Thus many Indians entitled to equal rights in the common lands of the Hoopa Valley Reservation and who received no allotment at all have been deprived of their rights by the so-called "just" action of the Secretary of the Interior in distributing the revenues of the original portion of the Reservation exclusively to the arbitrarily selected members of the Hoopa Valley Tribe.

Presumably as a reason why the decision of the Court of Claims is wrong, petitioner makes one last assertion to the effect that since the members of the Hoopa Valley Tribe constitute a minority of the In-

dians entitled to equal rights on the Reservation under the Court's decision, they may lose the controlling voice in the administration of the common lands of the Reservation. This assertion merely serves to point up the justness of the decision of the Court of Claims, and the complete injustice, recognized by the Court, in the action of the Secretary of the Interior in giving the benefit of most of the common land of the Hoopa Valley Reservation exclusively to a select minority, thereby depriving the majority of the Indians of the Reservation of their right to share equally in the benefits of such lands.

CONCLUSION

For all of the reasons stated, the petition of the United States of America for a writ of certiorari to review the judgment of the United States Court of Claims in Short et al. v. the United States, No. 102-63 (October 17, 1973) should be denied.

Respectfully submitted,

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